

REMARKS

The Abstract and the Specification have been amended. Claims 8-9 and 23-29 have been canceled, claims 1, 5, 6, 14, 20 and 22 have been amended and new claims 30-31 have been added. These changes have been made to place the application in better form for examination and to further obviate the 35 U.S.C. §112 rejections set forth in the Office Action dated September 22, 2004. It is believed that none of these amendments constitute new matter. Withdrawal of these rejections is respectfully requested.

The Examiner has objected to the abstract of the disclosure for the use of the word "novel." Applicant has amended the abstract as required by the Examiner. Withdrawal of this objection is respectfully requested.

The Examiner has objected to the disclosure because the claims recite ATCC Accession information not disclosed in the specification and provision of this information in the disclosure is required. Applicant requests that compliance with this requirement be held in abeyance until patentability is determined.

The Examiner has pointed out a spelling error on page 19 of the specification. Applicant has amended the specification to correct this error and thanks the Examiner for bringing it to Applicant's attention.

The Examiner has rejected claims 1-29 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner has rejected claims 1, 6, 22-23 and 28 for incompleteness of the ATCC Accession number. Upon allowance of this application, Applicant will amend the claims with the ATCC Accession number. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 20 for being an incomplete method claim. Applicant has amended claim 20 as suggested by the Examiner. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1-29 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time

the application was filed, had possession of the claimed invention. As stated in the specification on page 29, the seed deposit is being maintained by Soygenetics, LLC at its Webster City, Iowa facility. The deposit will be available to the Commissioner during the pendency of this application and upon allowance of any claims, deposit of the soybean seed will be made with the American Type Culture Collection.

The undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit; and
- e) the deposit will be replaced if it should ever become inviable or when requested by ATCC.

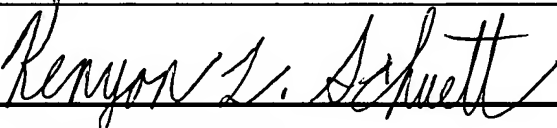
Accordingly, withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 5 and 8-9 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant has amended claim 5 as suggested by the Examiner and canceled claims 8-9. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 5 and 8-9 under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Eby (US Pat. No. 6,162,970 (A)). Applicant submits that there are differences between Soybean Cultivar SG1330NRR and Soybean Cultivar 61598277 of the Eby patent as evidenced by yield, seed protein content, seed oil content and plant height. Soybean Cultivar SG1330NRR has a yield of 39.1 bushels per acre (page 28, Table 1) whereas Soybean Cultivar 61598277 has a yield of 50.3 bushels per acre (column 8, Table 1). Soybean Cultivar SG1330NRR has a seed protein content of 36.8% (page 10, paragraph [0069]) while Soybean Cultivar 61598277 has a seed protein content of 34.6% (column 6,

number 14). Soybean Cultivar SG1330NRR has a seed oil content of 18.9% (page 10, paragraph [0069]) while Soybean Cultivar 61598277 has a seed oil content of 20.0% (column 6, number 14). Soybean Cultivar SG1330NRR has a plant height of 32.5 inches (page 10, paragraph [0063]) while Soybean Cultivar 61598277 has a plant height of 27 inches (converted from 69 cm as presented in Column 6, number 13). Applicant has canceled claims 8-9. Withdrawal of these rejections is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§102, 103 and 112. Reconsideration of this application and early notice of allowance is requested.

SIGNATURE OF APPLICANT, ATTORNEY OR AGENT REQUIRED					
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